

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 1747 of 2005

Shri Mohammad Afsar Jammulal
Tade ..Petitioner

vs.

1. Shri Pandurang Asaru Bansode
and others ..Respondents

Shri V.G.Mujumdar for petitioner.

CORAM: A.P.SHAH J.
14th September, 2005

P.C.

. I have heard Shri Mujumdar for the petitioner. I have also perused the record including judgments of the lower courts.

2. The petitioner landlord has claimed possession on the ground of default and also on the ground that the respondents have acquired suitable alternative accommodation. The ground of default was rejected by both the courts and is not pressed before me.

3. As far as the ground of acquisition of alternative suitable accommodation is concerned, the allegation of the landlord is that defendant no.1 has acquired alternative accommodation at Hadapsar and, therefore, the landlord is entitled to recover possession under section 13(1)(l) of the Bombay Rent Act. The suit premises consists of only one room and deceased Asaru Bansode father of respondent nos. 1 and 2 and husband of respondent no.3 was the tenant of the said premises. After his death the tenancy was transferred

in the name of respondent no.1. It appears that since one room was not sufficient for the growing family, respondent no.1 has acquired a single room tenement at Hadapsar and since last 20 years he is residing there with his family. There is no dispute that defendant nos. 2 and 3 have continued to reside in the suit premises along with other members of the family.

4. Merely because the person in whose name the receipts are issued happened to be one of the heirs of the original tenant the right of other heirs is not wiped out. The law in this regard is well settled and upon death of the original tenant the tenancy rights are inherited by all the legal heirs. It is seen from the record that the family grew in the course of time and as the suit premises were not sufficient to accommodate all the members of family respondent no.1 has shifted to Hadapsar. In the facts and circumstances of the case the lower Appellate Court was right in holding that the landlord has failed to prove that tenant has acquired alternative premises. No interference is warranted under Art.227. Petition is dismissed.